BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF CALIFORNIA

In the Matter of the Noticed Petition for Interim Suspension Order against:

SERGIO DA SILVA CAMINHA, M.D., Respondent

Agency No. 800-2019-055059

OAH No. 2020110696

DECISION

Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on December 28, 2020, in Sacramento, California.

Lynette Hecker, Deputy Attorney General (DAG), represented William J. Prasifka (petitioner), Executive Director, Medical Board of California (Board).

Mike Ball, Attorney at Law, McCormick, Barstow, Sheppard, represented Sergio Da Silva Caminha, M.D. (respondent) who was present at hearing.

Pursuant to Government Code section 11529, subdivision (d), declarations and other documentary evidence were received, the record closed, and the matter submitted for decision on December 28, 2020.

Factual Findings

- 1. The Board is the state agency charged with administering and enforcing the statutes and regulations governing the practice of medicine in the State of California. (Bus. & Prof. Code¹, § 2000 et seq.) The Board issued respondent Physician's and Surgeon's Certificate No. C 50172 (license) on December 11, 1998. Unless renewed or revoked, the license will expire on November 30, 2022.
- 2. In October 2020, respondent retired from practice. Most recently, he practiced with Golden State Cardiac and Thoracic Surgery (Golden State) with clinical privileges in cardiothoracic surgery at Kaweah Delta Medical Center hospital (Kaweah) in Visalia, California. On October 1, 2020, respondent terminated his contract with Kaweah and ended his affiliation with Golden State. Going forward, respondent would like to mentor and teach and needs his license in good-standing to do the same.

Petition

3. On November 24, 2020, the Board filed and served a Noticed Petition (Petition) for Interim Suspension Order (ISO), seeking to suspend respondent's license to practice medicine under Government Code section 11529. The Petition alleges respondent's ability to practice is impaired due to mental illness and/or physical illness affecting his competency to practice medicine safely and permitting him to continue to engage in the practice of medicine will endanger the public health, safety, and welfare.

¹ All further references are to the Business and Professions Code unless otherwise specified.

BOARD INVESTIGATION

- 4. In February/March 2019, Kaweah staff reported concerns about respondent's capacity and workload to management. Kaweah acted to address staff concerns by sending petitioner for a fitness for duty evaluation and granting his request for a leave of absence for the month of April. At the same time, Kaweah filed a Health Facility/Peer Review Reporting Form (Form 805) with the Board.
- 5. On March 16, 2019, Kaweah sent respondent for a Functional Capacity Evaluation with Sean Trujillo, Physical Therapist (PT). PT Trujillo completed a physical evaluation of respondent, testing range of motion, muscle strength, and gait and balance. In sum, PT Trujillo found respondent "completed all required job tasks with no limitations, and is apparently safe to perform this job [physician]." By request, on April 2, 2019, Onsy Said, M.D., respondent's primary care physician (PCP), conducted a physical examination of respondent and completed a Comprehensive Medical Evaluation Form (Form) for Kaweah. On the Form, Dr. Said reported: no history of symptoms or conditions, and no findings, tests or studies that raise concerns about respondent's ability to consistently perform his clinical privileges in a safe and competent manner; no accommodations necessary; and no recommendations for further study or evaluation. In sum, Dr. Said found respondent "is capable of safely performing all privileges requested." On April 12, 2019, Kaweah also sent respondent for a neurological assessment with Zoltan Moesary, M.D. Dr. Moesary's evaluation and report were not offered at hearing. Nonetheless, Harry Lively, M.D., Kaweah Chief of Staff, quotes Dr. Moesary's findings in a letter to petitioner, dated April 29, 2019, writing: "[respondent] is neurologically fit for his profession. There is no need for further neurological evaluation, brain imaging, neuropsychological testing, EMG/NCS or EEG at this time." Further, Dr. Lively's letter authorizes petitioner's return to practice

at Kaweah with monitoring by the Well-Being Committee for six months. Dr. Lively notes: "The focus of the monitoring will be your health and well-being to ensure that your workload is balanced, that you take appropriate time off and that On Call responsibilities are manageable." On May 6, 2019, Kaweah filed a Supplemental Form 805 with the Board noting respondent's privileges had been reinstated.

BOARD EXPERT - NEUROPSYCHOLOGIST HOWARD J. GLIDDEN, Ph.D.

- On September 28, 2020, the Board sent respondent for a 6. neuropsychological fitness for duty evaluation with Howard J. Glidden, Ph.D. In 1978, Dr. Glidden graduated from the University of California (UC), Santa Cruz with a Bachelor of Art in psychology. In 1980, he completed a Master of Art in clinical psychology at Pepperdine University, before graduating from Oklahoma State University with a Doctorate in Philosophy in counseling psychology in 1989. Thereafter, Dr. Glidden completed a one-year fellowship at Johns Hopkins School of Medicine/Kennedy Institute in developmental pediatrics, developmental neuropsychology. In 1995, Dr. Glidden became licensed to practice psychology in the state of California. He is board-certified by the American Board of Professional Neuropsychology and a Fellow of the American College of Professional Neuropsychology. Since 1997, Dr. Glidden has been in private practice as a clinical neuropsychologist in Fresno. He is also an Associate Clinical Professor in pediatrics and psychiatry for UC, San Francisco, and Adjunct Professor at the Kremen School of Education and Human Development at California State University, Fresno.
- 7. On September 28, 2020, Dr. Glidden conducted a neuropsychological evaluation of respondent. Dr. Glidden reviewed respondent's personal medical records, patient medical records written by respondent, and Kaweah staff complaints/interviews; conducted an in-person interview and a mental status and

motor examination; and administered a battery of 23 neuropsychological and intelligence tests. Based upon the evaluation, Dr. Glidden found respondent unable to practice medicine safely and his continued practice to be a present danger or threat to public health, welfare and safety.

8. Specifically, Dr. Glidden noted a present pattern of deficiencies in the following areas:

variable attention and sustained concentration; limited sound-symbol association; limited visual cognitive closure; significantly slowed somatosensory processing bilaterally in the upper extremities; topographical disorientation/route-finding deficit; limited strength, speed and coordination in the upper extremities bilaterally; upper extremity intention tremor; slowed visual-motor integration speed; impaired graphomotor integration (eye-hand coordination); constructional dyspraxia; impaired visual recognition; limited verbal spontaneity; word retrieval deficit; and impaired executive functioning.

Dr. Glidden opined: "[t]he deficits are likely progressive in nature, and will require further neurologic/neuroradiologic assessment in order to more fully articulate the etiology of these deficits." In addition, Dr. Glidden found "[respondent] presents as an individual with limited awareness/insight into his deficits." Ultimately, Dr. Glidden concluded: "[respondent's] pattern of deficits would directly impact his ability to practice safely as a physician and surgeon at this time."

Discussion

- 9. Based upon the evidence submitted, respondent is impaired due to mental illness and/or physical illness affecting his competency to practice medicine safely; and permitting him to continue to engage in the practice of medicine will endanger the public health, safety, and welfare. On September 28, 2020, Dr. Glidden conducted an exhaustive evaluation of respondent, and his findings are well-supported and persuasive. Moreover, respondent's performance on a battery of psychological and intellectual tests revealed a pattern of deficiencies in at least 13 areas; "deficits [that] would directly impact his ability to practice safely as a physician and surgeon at this time." Dr. Glidden is a well-qualified neuropsychologist and his findings were unchallenged.
- 10. At the same time, respondent has retired from the practice of medicine; he is not affiliated with a medical practice and he has no hospital privileges. However, with an unrestricted license, respondent can change his conditions at any time and could begin practicing medicine again as early as tomorrow. Because "[respondent] presents as an individual with limited awareness/insight into his deficits," as well as the resulting risks, the Board must act to protect the public and suspend respondent's license until a full hearing and decision can be rendered on the same.
- 11. Based upon the evidence submitted, there is a reasonable probability that the petitioner will prevail in the underlying action, and the likelihood of injury to the public in not issuing an ISO outweighs the likelihood of injury to respondent in issuing an ISO.

LEGAL CONCLUSIONS

- 1. An ALJ may issue an interim order suspending a license "only if the affidavits in support of the Petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act . . . or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare." (Gov. Code, § 11529, subd. (a).) The ALJ shall grant the interim order if, in the exercise of discretion, she concludes that: "(1) There is a reasonable probability that the petitioner will prevail in the underlying action; and (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order." (Gov. Code, § 11529, subd. (e).)
- 2. Petitioner need only prove his case by a preponderance of the evidence, and this requires a demonstration of a reasonable probability that petitioner will prevail in establishing the violations complained of in seeking the injunction or, in this case, an ISO. (*People v. Frangadakis* (1960) 184 Cal.App.2d 540, 549-50; see also Gov. Code, § 11529, subd. (e) [the standard and burden of proof is that which applies to the issuance of a preliminary injunction pursuant to Code of Civil Procedure section 527].) Further, when a governmental entity seeks to enjoin a statutory violation, evidence that it is reasonably probable the agency will prevail on the merits gives rise to a rebuttable presumption that the potential harm to the public outweighs the potential harm to the defendant. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72-73.).
- 3. Pursuant to section 820, the Board may order a licensee to undergo an examination by one or more physicians and surgeons or psychologists to determine

whether the licensee's ability to practice medicine safely is impaired due to mental or physical illness. Section 822 authorizes the Board to suspend or revoke a license if the licensee is unable to practice medicine safely due to a mental health condition or physical illness affecting competency.

4. When all the evidence is considered, petitioner established that: (1) respondent is unable to practice medicine safely due to a mental and/or physical illness; and (2) permitting respondent to continue to engage in the practice of medicine until an accusation is served and a decision is rendered thereon would endanger the public health, safety, and welfare. Petitioner established further that: (1) there is a reasonable probability that petitioner will prevail if an accusation is filed against respondent; and (2) the likelihood of injury to the public in not issuing an ISO outweighs the likelihood of injury to respondent in issuing the order. Consequently, pursuant to Government Code section 11529, respondent license must be suspended from practicing medicine until an accusation is issued and a decision is rendered thereon, or this matter is otherwise resolved.

ORDER

- 1. The Petition for Interim Suspension Order is GRANTED.
- 2. Physician and Surgeon License No. C 50172 issued to Sergio Da Silva Caminha, M.D., is suspended in accordance with Government Code section 11529. During the time that this Interim Suspension Order is in effect, respondent is prohibited from engaging in the practice of medicine. He shall surrender to the Medical Board all indicia of his licensure as a physician.

3. This order shall remain in full force and effect until such time as an accusation is filed and served and a decision is rendered thereon pursuant to Government Code section 11529, subdivision (f), or this matter is otherwise resolved.

DATE: January 11, 2021

ERIN R. KOCH-GOODMAN

Administrative Law Judge

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Office of Administrative Hearings